IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	Group Art Unit: **2163**
Gregory H. Milby	§	
	§	
Serial No.: **10/804,793**	§	
	§	Examiner: **Le, Uyen T.**
Filing Date: **03/19/04**	§	
	§	
Title: **Operation Control for**	§	
Data Types	§	Attorney. Docket No. **11351**

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Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets.

Respectfully submitted,

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Date: April 14, 2008

Reasons for Review

Claims 1-7, and 9-22 are pending and stand rejected. A Final Office Action issued on November 14, 2007. Applicant responded on January 18, 2008. An Advisory Action issued on March 3, 2008.

1.   The Bardin reference relates to the Ada programming language and does not teach or suggest (a) creating a UDT in a database system, as required by independent claims 1, 9 and 16.

The Office Action rejected claims 1-5, 8-13, and 16-20 under 35 USC 102(b) as being anticipated by an article entitled "Composable Ada Software Components and the Re-Export Paradigm" by Bardin and Thompson (hereinafter "Bardin"). Claim 8 has been cancelled and its rejection is moot.

Applicant respectfully disagrees with regard to the remaining claims. Bardin describes a re-export operation for the Ada programming language. The Ada programming language is not a database system.

The Advisory Action responded that:

the examiner does not equate the ADA programming language with a database system. It is the re-export operation for the ADA programming language described in Bardin that reads on the claimed method. The claimed database system merely corresponds to a system for performing the claimed method, thus was rejected for the same reasons.

The Advisory Action appears to have argued that the preamble of claim 1 is not a limitation. However, as the Court of Appeals for the Federal Circuit recently summarized in *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 952 (Fed. Cir. 2006):

the preamble is regarded as limiting if it recites essential structure that is important to the invention or necessary to give meaning to the claim. *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1305-06 (Fed. Cir. 2005), *cert. denied*, --- U.S. ----, 126 S.Ct. 1174, 163 L.Ed.2d 1141 (2006); *SanDisk Corp. v. Memorex Prods., Inc.*, 415 F.3d 1278, 1284 n. 2 (Fed.Cir.2005), *cert. denied*, --- U.S. ----, 126 S.Ct. 829, 163 L.Ed.2d 707 (2005). That is, if the claim drafter "chooses to use both the preamble and the body to define the subject matter of the claimed invention, the invention so defined, and not some other, is the one the patent protects." *Bell Commc'ns Research, Inc. v. Vitalink Commc'ns Corp.*, 55 F.3d 615, 620 (Fed. Cir. 1995) (emphasis in original).   Moreover, when the limitations in the body of the claim "rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention." *Eaton Corp. v. Rockwell Int'l Corp.*, 323 F.3d 1332, 1339 (Fed. Cir. 2003).

That is precisely the situation in independent claims 1 and 9 in this case. The term "UDT" derives antecedent basis from the phrase "a user-defined type (UDT) in a database

system" in the preamble of claims 1 and 9. The term "a user-defined type (UDT) in the database system" appears in the <u>body</u> of independent claim 16.

Therefore, in order to anticipate independent claims 1, 9 and 16 under 35 USC 102(b), Bordin must teach creating a user-defined type (UDT) in a database system. Bordin does not teach or suggest such a thing. Instead, Bordin describes a re-export feature for the Ada programming language.

Thus, Bordin does not describe creating a UDT in a database system, as required in claims 1, 9, and 16. Accordingly, Bordin does not anticipate claims 1, 9, and 16. Claims 2-4, 10-13, and 17-20 all depend from one of claims 1, 9, and 16 and are patentable for at least the same reasons. Applicant respectfully requests that this rejection be withdrawn.

2.   The Cunningham reference does not teach or suggest (a) a data dictionary, or (b) recording activated underlying operations for the UDT, as required by independent claims 6, 14, and 21.

The Office Action rejected claims 6, 14, and 21 under 35 USC 103(a) as being unpatentable over Bardin in view of United States Patent Publication 2006/0064412 (hereinafter "Cunningham").

Applicant respectfully disagrees. Neither of the cited references teaches or suggests recording, in a data dictionary, the activated underlying operations for the UDT, as required by claims 6, 14, and 21. The Final Office Action acknowledges that Bardin does not include this element. Final Office Action at 3.

Cunningham describes mapping storage platform schemas to UDT classes in a database engine store, Cunningham at [0064], but does not hint that (a) the database engine store is a data dictionary or (b) the mapping includes a description of selected operations for a data type.

The Advisory Action admits that Cunningham does not teach that the database engine store is a data dictionary but argues that "[i]t would have been obvious to one or ordinary skill in the art to use any recording medium including a data dictionary for easy look-up." Applicant disagrees. Cunningham paragraph [0064] is the only reference to the "database engine store." That term is not used or defined anywhere else in Cunningham. Without such guidance, Applicant contends that the term would not teach or suggest a data dictionary to a person of ordinary skill.

Further, the Advisory Action conceded that the "mapping" described in Cunningham paragraph [0064] does not teach or suggest recording the activated underlying operations for the UDT. The Advisory Action did not respond to that portion of Applicant's argument.

Consequently, claims 6, 14, and 21 are not obvious in light of the Office Action's combination of Bardin and Cunningham. Applicant respectfully requests that this rejection be withdrawn.

3.   The Cunningham reference does not teach or suggest accepting a query including a query operator that takes one or more operands, where one or more of the operands are UDT columns, determining whether the query operator is activated for the UDT of each UDT column, and if it is, performing the operation, as required by claims 7, 15 and 22.

The Office Action rejected claims 7, 15, and 22 under 35 USC 103(a) as being unpatentable over Bardin in view Cunningham.

Neither of the cited references teaches or suggests accepting a query including a query operator that takes one or more operands, where one or more of the operands are UDT columns, determining whether the query operator is activated for the UDT of each UDT column, and if it is, performing the operation, as required by claims 7, 15 and 22. The Final Office Action acknowledged that Bardin does not include this element. Final Office Action at 4.

Cunningham does not have a need for such a feature because Cunningham does not provide for selectively activating one or more operations from an underlying UDT. If all of the query operators available from an underlying UDT are activated for a UDT, as Cunningham describes, see Cunningham at [0070] (describing "providing inheritance, in which a type can be extended with an additional method to create a new type"), there is no need to determine whether the query operator is activated for the UDT. The Final Office Action conceded this point because it did not respond to this portion of the argument.

Consequently, claims 7, 15, and 22 are not obvious in light of the Office Action's combination of Bardin and Cunningham. Applicant respectfully requests that this rejection be withdrawn.